

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 DANIEL J. STOCKWELL,

10 Plaintiff,

11 v.

12 JAMES KEY,

13 Defendant.  
14

CASE NO. C13-5435 RBL

15 ORDER GRANTING MOTION FOR  
16 LEAVE TO APPEAL IFP

17 DKT. #54

18 THIS MATTER is before Court on Plaintiff Daniel Stockwell's Motion for leave to  
19 appeal *in forma pauperis* [Dkt. #54]. This Court must determine whether his appeal is frivolous  
20 or taken in bad faith. *See* 28 U.S.C. § 1915(c).

21 This Court adopted [Dkt. #49] Magistrate Judge J. Richard Creatura's Report [Dkt. #44]  
22 recommending denial of Stockwell's petition for habeas relief, because Stockwell failed to show  
23 that the state court's rulings violated clearly established federal law. This Court also adopted  
24 Magistrate Judge Creatura's recommendation to deny Stockwell a certificate of appealability  
because Stockwell did not make a substantial showing that he was denied a constitutional right.  
*See* 28 U.S.C. § 2253(c)(2). Stockwell later moved for an extension of time to file for a

1 certificate of appealability [Dkt. #52], which this Court denied as moot [Dkt. #53], having  
2 already adopted Magistrate Judge Creatura's recommendation.

3 A court should "deny leave to proceed *in forma pauperis* at the outset if it appears from  
4 the face of the proposed complaint that the action is frivolous or without merit." *Tripati v. First*  
5 *Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C.  
6 § 1915(e)(2)(B)(i).

7 While Stockwell's claims are not viable, it cannot be said that they are frivolous, or that  
8 he is acting in bad faith. His Motion [Dkt. #54] is GRANTED; he shall be permitted to appeal *in*  
9 *forma pauperis*.

10 IT IS SO ORDERD.

11 Dated this 9<sup>th</sup> day of February, 2016.

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Ronald B. Leighton

14 United States District Judge  
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